Verizon has any legal obligation to establish a queue for dark fiber (or, for that matter, a queue for any other UNE). *Albert Panel Rebuttal* at 12:5-9.

Absent a showing of discrimination, there is no basis for ordering modifications to Verizon's existing dark fiber provisioning processes, let alone for implementing the unprecedented queue proposal Cavalier has made. *See Virginia § 271 Order* ¶ 34 (refusing to impose a new loop qualification process in the absence of showing of discrimination, *citing UNE Remand Order* ¶ 429: "If an incumbent LEC has not compiled such information for itself, we do not require the incumbent to construct a database on behalf of requesting carriers.").

Aside from the lack of any legal support for its proposal, Cavalier's analogy between a dark fiber queue and a collocation queue is flawed as a factual matter. As Verizon witness Albert explained, a collocation queue is quite different from a dark fiber queue. Verizon keeps a collocation queue only when physical collocation is unavailable, and there are only *five* Verizon central offices in Virginia with such a queue. Keeping track of carriers standing in line for this highly limited collocation space is manageable. By contrast, there are *thousands* of assignable fiber optic cable segments in Virginia. *Albert Panel Direct* at 19:6-10. It is impractical for Verizon to check continually to determine whether unmet dark fiber requests for these segments, made as long as four years ago, can now be satisfied, which is what Cavalier's dark fiber queue would require. *Albert Panel Direct* at 18:19-21; *Albert Panel Rebuttal* at 11:9-12. Moreover, the effort to maintain a dark fiber queue would probably be wasteful in any event because, if Cavalier's initial request for a particular dark fiber segment is denied, it probably will have found another way to provide its planned service. *Albert Panel Direct* at 18:9-16.

Cavalier states that its dark fiber queue is "intended to avoid repetitive inquiries from Cavalier to Verizon about the same dark fiber segment." *Cavalier Post-Hearing Brief* at 38.

But, if adopted, Cavalier's proposal would drastically *increase* repetitive inquiries about particular dark fiber segments. As Verizon witness Albert explained at the hearing, Cavalier's proposal would require Verizon to conduct a manual engineering query for a particular dark fiber segment *every day*. *Hearing Tr.* at 284:2-6 (Albert). Verizon witness Albert also explained that the annual cost of a queue for just one dark fiber segment would be upwards of $60,000. *Hearing Tr.* at 285:16 (Albert). Cavalier simply ignores this undisputed record evidence.

Cavalier further contends that Verizon's arguments about the burden of establishing a dark fiber queue are vague. In fact, Verizon witnesses Albert and Shocket provided extensive testimony at the hearing about exactly what Verizon would be required to do to establish a dark fiber queue. *See Hearing Tr.* at 284:2 – 285:17 (Albert) (explaining that Cavalier's request would require an engineer to conduct a manual dark fiber inquiry for every dark fiber request held in queue every single day); *Hearing Tr.* at 287:9 – 288:2 (Shocket) (explaining that there is no "inquiry system" and that all requests for dark fiber are processed manually).

Therefore, the Bureau should reject Cavalier's language establishing a dark fiber queue.

B. There Is No Reason For Verizon To Provide Cavalier's Detailed Dark Fiber Maps.

Cavalier ignores the legal standard controlling this issue and claims instead that Verizon should provide extensive dark fiber maps because commercial dark fiber vendors do. *Cavalier Post-Hearing Brief* at 40-41. This claim is irrelevant to resolution of this issue. Verizon is required to treat its wholesale customers the same as its retail customers. It is not required to replicate processes that commercial vendors follow.

Cavalier also claims that it needs its proposed maps "to connect multiple central offices through diverse routes, or build a ring as part of a network." *Cavalier Post-Hearing Brief* at 40. But nothing stops Cavalier from ordering dark fiber for these purposes now. In fact, Cavalier did not allege even a single instance in which Cavalier was prevented from obtaining Verizon dark fiber for these purposes.

Verizon proposes to provide Cavalier with the same dark fiber information that the Commission approved in the *Virginia § 271 Order*. *Virginia § 271 Order* ¶¶ 145-147. Cavalier has given the Bureau no good reason to deviate from the Commission's reasoning in that case. The Bureau should thus reject Cavalier's fiber map proposal

C. Cavalier's Proposed "Joint Field Survey" Is Burdensome And Unnecessary.

At the hearing, Verizon witness Albert explained why Cavalier's proposed joint field survey would waste resources without producing any material benefits. *See Hearing Tr.* 239:5-16 (Albert) Under that proposal, the Verizon technicians who conduct field surveys to determine dark fiber availability would be required to make appointments with Cavalier engineers before the Verizon personnel could conduct those surveys, thus limiting their ability to schedule their own work efficiently. *Albert Panel Direct* at 21:11-13; *Albert Panel Rebuttal* at 13:11-13. Moreover, scheduling these joint surveys would provide Cavalier engineers with little useful information because the Verizon technicians who conduct the surveys – personnel who splice cable and pump water out of manholes – do not have the answers to the questions Cavalier engineers are likely to ask. *Hearing Tr.* at 239:5-16 (Albert). Cavalier has not even attempted to respond to these arguments.

Instead, Cavalier simply lists two two-year old incidents in which it tried to obtain dark fiber and which purportedly show problems with Verizon's dark fiber field survey process. *Cavalier Post-Hearing Brief* at 43 These incidents prove nothing. In Cavalier's Norfolk example, Verizon's records indicated that dark fiber simply was unavailable to meet Cavalier's request. *Cavalier Post-Hearing Brief* at Exhibit C10-4. In the Herndon example, dark fiber was initially unavailable, but became available the next year. *Cavalier Post-Hearing Brief* at Exhibit C10-3. Although Cavalier claims this latter incident is particularly significant, Verizon witness Albert explained that such examples are normal because the availability of dark fiber in Verizon's network changes on a regular basis for a variety of reasons. *See Hearing Tr.* at 220:19 – 221:15 (Albert) (explaining the different circumstances that affect dark fiber availability in Verizon's network).

Moreover, even if these two isolated incidents were somehow sufficient to show that problems arose with Verizon's dark fiber process, they do not demonstrate a problem with Verizon's *existing* process. Both examples occurred prior to the Bureau's ruling in the *Virginia Arbitration Order*, after which Verizon implemented a new process to search for alternative routes between wire centers when a requested route is unavailable. *Albert Panel Rebuttal* at 13:2-7; *Hearing Tr* at 226:12 – 228:17 (Albert); Verizon's Proposed Section 11.2.15.4. The Commission has found that Verizon's current process, reflecting the requirements of the *Virginia Arbitration Order*, meets Verizon's nondiscrimination obligation (*Virginia § 271 Order* ¶¶ 145-147), and there is no reason to modify that process with Cavalier's burdensome and unnecessary joint field survey.

D. There Is Not Need For A Dispute Resolution Mechanism Specifically For Dark Fiber Disputes.

Cavalier claims that its Proposed Section 11.2.15.5 "would not constitute an entirely new 'dispute resolution procedure'" just for dark fiber. *Cavalier Post-Hearing Brief* at 43. Cavalier's claim in its brief, however, contradicts its proposed contract language:

> [t]he parties also agree to negotiate in good faith to devise a viable alternative means of resolving any disputes about the availability of dark fiber....

Cavalier's Proposed Section 11.2.15.5. If the Bureau adopts Cavalier's language, Verizon would be required to establish a dispute resolution mechanism specifically for dark fiber disputes. Since Cavalier is apparently unsure about what it is requesting, and since the parties have already agreed upon dispute resolution procedures to govern disputes under their Agreement (*See* Proposed Section 28.11), the Bureau should reject Cavalier's proposed contract language.

E. Cavalier's Request For A More Burdensome Dark Fiber Inquiry Process Should Also Be Rejected Because Cavalier Can Obtain The Information It Needs Through A Field Survey.

Cavalier wants Verizon's responses to dark fiber inquiries to contain enough information to verify whether dark fiber is physically available between Verizon central offices. *Cavalier Post-Hearing Brief* at 45. This information, however, is already available to Cavalier through the field survey, at time and materials charges.

Verizon witness Albert explained that the dark fiber inquiry process was not designed to provide a "field survey" level of information. Dark fiber inquiries are instead designed to give CLECs "fast and relatively cheap" answers about dark fiber availability and the rates for a dark fiber inquiry were based on this assumption. *Hearing Tr* at 284:20 (Albert). If Cavalier wants more detailed information, Verizon will provide it through a field survey as Verizon witness Albert explained:

> if there was other additional, more unique case-by-case information that the CLEC wanted, then they would request and [Verizon] would provide that through the field survey.

Hearing Tr. at 289:18-22 (Albert). Cavalier seems to concede as much, referring to Verizon's "information gathering process" for dark fiber as "one that seems to include the information requested by Cavalier." *Cavalier Post-Hearing Brief* at 45.

The Commission has already found that Verizon's dark fiber process is nondiscriminatory, and that it complies with all the Bureau's requirements in the *Virginia Arbitration Order*. The Bureau should reject Cavalier's unjustified demands for cumbersome and unduly burdensome changes.

IX. THE BUREAU SHOULD REJECT CAVALIER'S PROPOSAL FOR AN IDLC UNBUNDLING TRIAL BECAUSE VERIZON WILL PROVIDE CAVALIER WITH ACCESS TO CUSTOMERS SERVED BY IDLC IN COMPLIANCE WITH THE *TRIENNIAL REVIEW ORDER* (ISSUE C14)

It is undisputed that Verizon complies with the *Triennial Review Order's* requirements for providing unbundled loops to customers served by Integrated Digital Loop Carrier ("IDLC"). *Albert Panel Rebuttal* at 13:23 – 14:20. The only issue Cavalier raises in its post-hearing brief is whether the Bureau should require Verizon should be required to go beyond the requirements of the *Triennial Review Order* and conduct a technology trial that would be expensive, lengthy, and pointless.

Verizon has committed that it will provide unbundled loops to any customer served by IDLC. *Albert Panel Rebuttal* at 14:10-20. Generally, Verizon will provide these loops using existing copper or Universal Digital Line Carrier ("UDLC") facilities. Only one percent of the loops in Virginia are located at an outside plant terminal where only IDLC loops are available. To provide unbundled loops for customers served by these facilities, Verizon will construct new copper or UDLC facilities. *Albert Panel Rebuttal* at 15:10-12; *Hearing Tr.* at 545:9-16 (Albert).

Cavalier has complained that UDLC loops cut the speed of data transmission (*Vermeulen Direct* at 6), but the *Triennial Review Order* specifically allows Verizon to use UDLC to provide unbundled loops to customers served by IDLC. *Triennial Review Order* ¶ 297. In addition, Verizon witness Albert has explained in detail that Cavalier is wrong on the facts and that there is no correlation between data speed and the kind of loop a customer uses. *Albert Panel Rebuttal* at 16:18-20.

Cavalier also insists that the parties conduct of trial of "hairpin/nailup" and "multiple switch hosting" to unbundle the IDLC loop itself. *Cavalier Post-Hearing Brief* at 46. Multiple switch hosting is the principal method Cavalier wants to test. Cavalier's Proposed Sections 11.4.2, 11.4.3 (multiple switch hosting used to "access a larger number of lines" while hairpin/nail would be used only for "access to a limited number of lines").

Cavalier has already conceded, however, that it is pointless to test multiple switch hosting. That approach assumes that Verizon has deployed the GR-303 interface in its network, which Verizon Virginia has not done. *Albert Panel Rebuttal* at 18:21-22; *Hearing Tr.* at 536:7-12 (Albert). When Cavalier witness Vermeulen learned this at the hearing, he agreed "obviously switch multihosting is not an option " *Hearing Tr.* at 551:13-17 (Vermeulen). Verizon witness Albert explained several other reasons why multiple switch hosting was not a viable option, including the fact that no vendor supports the use of the GR-303 interface to connect two different carriers, that the approach creates significant network reliability and network security problems, and it is extraordinarily expensive. *Albert Panel Rebuttal* at 18:21 – 19:20.

Verizon witness Albert also explained why a trial for the hairpin/nailup approach serves no useful purpose. In 2000, Verizon analyzed the approach at Cavalier's request and concluded that, while hairpin/nailup could be made to work technically, it was not a cost-justifiable architecture *Albert Panel Rebuttal* at 18:4-16; Exhibit C. Even MCI agreed during a New York Public Service Commission Collaborative that hairpin/nailup was the least desirable way to provide unbundled loops to customers served by IDLC. *Albert Rebuttal* Panel at 18:14-16. And the Commission's *Triennial Review Order*, in a footnote discussion of hairpin/nailup, notes that it is "not always desirable for either carrier." *Triennial Review Order* ¶ 297 n. 855.

Cavalier attempts to minimize the problems with multiple switch hosting and hairpin/nailup by claiming that "it took four years" for Verizon to note its problems with these approaches. *Cavalier Post-Hearing Brief* at 47. But this is not true. Verizon told Cavalier about the problems with hairpin/nailup in 2000 *Albert Panel Rebuttal* at 18:4-16. And the problems with the technology underlying multiple switch hosting were known in the industry in 1999. *Id.* at Exhibit D. (letter from Alcatel describing problems with multiple switch hosting).

In an apparent attempt to deal with the problems of multiple switch hosting and hairpin/nailup, Cavalier recently amended its IDLC trial proposal to provide that, during its proposed trial, the parties should work together to avoid inordinate burden or expense. Cavalier Proposed Section 11.4.4. Cavalier says that all it may want is "a few relatively simple discussions" about the technologies that it proposes. *Cavalier Post-Hearing Brief* at 47. But the parties have already had those "simple discussions." Verizon has conducted an extremely detailed analysis of hairpin/nailup, with a cost of $50,000 in engineering time, and provided the results to Cavalier. *Albert Panel Rebuttal* at 18:4-14; *Hearing Tr.* at 530:11 – 531:3 (Albert). Verizon has also investigated multiple switch hosting (*Albert Panel Rebuttal* at 18:21 – 19:20), and Cavalier witness Vermeulen has agreed that multiple switch hosting is "not an option." *Hearing Tr.* at 551:13-17 (Vermeulen). There is nothing more to discuss. Furthermore, the vague new language that Cavalier proposes in its Section 11.4.4 is an invitation to constant wrangling.

In short, Verizon's proposal complies with the *Triennial Review Order* and should be adopted. Cavalier's proposal for a retrial of technology that has already been trialed and found to be inefficient, expensive, and undesirable should be rejected.

X. THE BUREAU SHOULD REJECT CAVALIER'S PROPOSAL TO OVERHAUL THE POLE ATTACHMENT PROCESS IN VIRGINIA (ISSUE C16)

Cavalier does not dispute (1) that Verizon's proposed pole attachment terms are precisely the same as those in the *Virginia AT&T Agreement*, (2) that the Commission has found that this process is non-discriminatory and complies with the Act in the *Virginia § 271 Proceeding*, or (3) that Cavalier has not used the pole attachment process in Virginia for two years. *Cavalier Post-Hearing Brief* at 49. Nevertheless, Cavalier continues to insist on sweeping changes to the process without making any showing that the current process is discriminatory. Absent such a showing, Verizon is not required to institute a new pole attachment process. *See Virginia § 271 Order* ¶ 34 (refusing to impose a new loop qualification process in the absence of showing of discrimination).

Cavalier nevertheless argues in its post-hearing brief that Verizon has only "picked at the edges of [its] arguments about pole attachments." *Cavalier Post-Hearing Brief* at 52. In particular, Cavalier argues that Verizon only objected to two withdrawn aspects of its proposal – Cavalier's Proposed Section 16.2.7, which cross-referenced Cavalier's outside plant handbook and Cavalier's Proposed Section 16.2.8, which required that make-ready work be completed in 45 days – and that Verizon "has not refuted the specific problems that led Cavalier to propose a single-contractor process." *Id.* at 50, 52 (quoting 52).

This is untrue. Verizon has shown that Cavalier's proposed process would be extremely burdensome because it drastically changes the state-wide pole attachment process by forcing Verizon to try to coordinate make-ready contracting for all pole attachers in Virginia. *Young Direct* at 7:3-18. Verizon has also shown that it would be futile to try to implement the central feature of Cavalier's plan – use of an independent contractor to perform make-ready work for all attachers on a pole – because other attachers would never agree to it. *See, e.g., Griles Surrebuttal* at 2:4-15, 3:5-13. Pole attachers, such as telephone companies, cable companies, and electric companies, do not want an independent contractor rearranging their facilities on a pole because they are concerned about damage to their facilities and reduction in their quality of service. *Griles Surrebuttal* at 2:16-3:13; *Young Direct* at 5:7-19. Under Cavalier's proposal, "Verizon will be primarily responsible for meeting with, and seeking the concurrence of, other parties attached to the poles, and endeavoring to implement the new permitting and make-ready process." Cavalier Proposed Section 16 2.2. This creates an uncertain, and unreasonable, set of responsibilities because there is no guarantee other attachers would agree to a single-contractor make-ready process.

Cavalier's own testimony and exhibits corroborate these points. Mr. Ashenden, whom Cavalier designated an expert in these matters, demonstrated that carriers do not agree on a unified make-ready process. *See, e.g., Ashenden Surrebuttal* at 2:19-3:9; *Ashenden Rebuttal* at Exhibit MA-8. Furthermore, the evidence attached to Mr. Ashenden's surrebuttal testimony highlights the difficulties of organizing a unified single-contractor make-ready process. Cavalier attached a purported timeline in Exhibit MA-11 that indicates it took ten months to coordinate a single-contractor procedure for only six permits, and the emails that Cavalier included in its Exhibit MA-11 indicate some of the numerous problems encountered in arranging for a single-contractor process. For example the emails suggest "procedural concerns with Cox," concerns regarding "what would happen if problems [were] encountered in the field where the contractor could not easily define an obvious attachment option," and problems associated with the cost estimates Cavalier received. *Ashenden Surrebuttal* at Exhibit MA-11 (*see* Ashenden to Griles, 1/02/02; Ashenden to Griles, 1/30/02). And Mr. Ashenden acknowledges in the emails that the single-contractor trial "lost momentum" five months into the negotiation process. *Ashenden Surrebuttal* at Exhibit MA-11 (Ashenden to Griles, 1/02/02). Far from supporting the notion of uniform support for a single-contractor process, the emails introduced by Cavalier reinforce the difficulties Verizon would experience if it were required to coordinate new procedures for a unified make-ready process.

Cavalier also cites an October 22, 2003 order of the Vermont Public Service Board in support of its proposal (*Cavalier Post-Hearing Brief* at 49 n.139), but that decision has nothing to do with Cavalier's independent contractor proposal. In that decision, the Vermont Public Service Board decided how much Verizon Vermont is entitled to charge when others put attachments on poles. It does not address, let alone mention, Cavalier's independent contractor proposal. Cavalier might rely on the Vermont decision in support of its proposal to impose a 45-day time limit on the completion of make-ready work, a proposal that Cavalier seems to abandon in its brief (*Cavalier Post-Hearing Brief* at 50), and which in any event is inconsistent with the Commission's requirement that Verizon give 60 days notice to other attachers before performing any make-ready work. *Local Competition Order* ¶ 1209. Even if Cavalier has not abandoned the proposal, though, the Vermont decision does not support it. The Vermont Public Service Board decided that, for large pole attachment projects, make-ready work "shall be completed within a time to be negotiated between all the affected owners and attachers." *See Cavalier Post-Hearing Brief*, Exhibit C16-2 at 6, § 3.707(C)(3). This decision imposes time limits for very small projects, but even there, the time limits are substantially longer (60 to 90 days) than Cavalier proposes here. In addition, the Vermont Public Service Board reached these conclusions in a tariff proceeding, in which all interested parties had an opportunity to participate, not a two-party arbitration like this proceeding.

Cavalier's remaining criticisms of Verizon's existing pole attachment process are wide of the mark. First, Cavalier is not entitled to a new pole attachment process simply because there have been problems with the old one. Under the Act, Cavalier is entitled to process free of discrimination, not a perfect process (47 U.S C. § 251(b)(4)), and the Commission has consistently found that Verizon's pole attachment process is non-discriminatory.

Second, Cavalier has no first hand knowledge of the existing process because it has not used it. It is undisputed that Cavalier has not used the process in two years, and in that period, Verizon has improved the process significantly by centralizing and streamlining a number of critical functions. *Hearing Tr.* at 337:4 – 339:7 (Young); *Young Direct* at 8:6; *Young Rebuttal* at 4:8.

Third, many of the faults in the process alleged by Cavalier relate to delays and inefficiencies caused by other attachers – not by Verizon. Mr. Ashenden, for example, testified that delays in the process were often caused not by Verizon, but by "other attachers [who] did not always inform Cavalier when their work was completed." *Ashenden Rebuttal* at 8:1-2; Exhibit MA-1; *Ashenden Direct* at 7:16-20 (criticizing duplicative costs, not Verizon charges). The fact that other attachers may have caused delays is no proof at all that Verizon discriminated against Cavalier.

Verizon's pole attachment process complies fully with the Act. The Bureau should adopt Verizon's proposed language on this issue and reject Cavalier's.

XI. CAVALIER'S ARGUMENTS DO NOT SUPPORT ADOPTION OF ITS PROPOSED PENALTY REGIME FOR INAPPROPRIATE CUSTOMER CONTACTS (ISSUE C17)

Cavalier does not attempt in its post-hearing brief to explain why the Bureau should adopt contract language in this proceeding that is radically different from the language that resulted from the *Virginia Arbitration Order* Instead, Cavalier relies entirely on isolated and outdated allegations of disparagement. *Cavalier Post-Hearing Brief* at 54-55. Cavalier's proposal is vague, anticompetitive and ambiguous, and is unsupported by the evidence and the law. The Bureau should once again adopt the language found in the *Virginia AT&T Agreement.*

Cavalier describes Verizon's objections to its vague and ambiguous language as "straw men" and claims that such broad interpretations are "not the aim of Cavalier's proposed language." *Cavalier Post-Hearing Brief* at 54. Whether sweeping and ambiguous terms (presumably to trigger as many penalties as possible) is Cavalier's aim or not, its proposal if adopted, would generate a mountain of disputes. For example, the parties would likely differ over whether particular Virginia residents are "prospective" Cavalier customers, whether a referral was "mutually agreed," or whether a myriad of other actions and customer contacts constitute violations of Cavalier's contract provisions. *See Smith Direct* at 17:6-8 ("prospective customer" could include any Virginia resident); *Hearing Tr.* at 209:10-20 (Smith), *Smith Direct* at 16:6-13 (providing "mutually agreed referrals" would require Verizon to train its employees about Cavalier's products and services). It would also chill legitimate competitive behavior by Verizon. Cavalier's language is too vague and subjective to be included in an interconnection agreement. *Hearing Tr.* at 209:10 – 210:3 (Smith); *Smith Direct* at 16:20-22, 17:6-8.

The documents on which Cavalier's disparagement claims rely – documents attached to its brief – do not support its factual claims. Many of the documents are difficult to decipher, but they appear to contain email messages strung together in no particular chronological order. These emails are both internal Cavalier communications and emails between Cavalier and Verizon and Verizon Information Services, Verizon's directory publishing affiliate. Most of the documents are at least several years old, are taken entirely out of context, and without further explanation and investigation, offer proof of nothing, let alone inappropriate conduct by Verizon.

Additionally, the documents appear primarily to address Cavalier's complaints about the conduct of Verizon Information Services – actions Cavalier may not like, but that are entirely legal and unrelated to the contract language Cavalier proposes. *See Hearing Tr.* at 204:17 – 205.4 (Smith) (explaining that Verizon Information Services is a separate subsidiary and not a party to the proposed agreement). Furthermore, the documents in some cases explicitly contradict Cavalier's claim that Verizon has been unresponsive to its complaints about alleged improper customer contacts and that informal processes to resolve complaints are "not workable." *Cavalier Post-Hearing Brief* at 55. For example, Cavalier attaches two emails from Verizon to Cavalier that detail the steps Verizon took to investigate and resolve a specific Cavalier complaint about inappropriate customer contacts. *See Cavalier Post-Hearing Brief*, Exhibit C-17, number C000171 (explanation from Verizon to Cavalier at conclusion of investigation); numbers C000177-178 (explanation from Verizon to Cavalier of manner in which Cavalier concerns to be addressed) These documents are consistent with witness Smith's testimony that opportunities already exist for Cavalier to have its concerns addressed and that Cavalier's draconian penalties are unnecessary. *See Hearing Tr.* at 204:12 – 207:6 (Smith) (describing opportunity to address problems through account management teams, Verizon's existing codes of business conduct that each employee must sign, and disciplinary procedures for inappropriate employee conduct); *Smith Rebuttal* at 10:7-10 (Verizon's retail arm is separate from its wholesale arm and retail personnel must follow strict guidelines controlling access to wholesale information). These documents "vividly illustrate" nothing.

Cavalier's written testimony also fails to support its claims that Verizon systematically disparages Cavalier. Cavalier claims that its proposal "derives from Cavalier's direct experience with a wide range of inappropriate conduct." *Cavalier Post-Hearing Brief* at 53. But as Verizon witness Smith stated, Cavalier pointed to only five examples of alleged misconduct by Verizon and only two of the five alleged examples supposedly related to inappropriate contacts between Verizon personnel and a Cavalier customer. *Smith Rebuttal* at 10:15-16, 11:8-17. And, with respect to these two allegations, other than hearsay, Cavalier offered no evidence that Verizon representatives acted inappropriately. *Smith Rebuttal* at 10:16-18, 11:8-17.

Cavalier also wrongly asserts that if "inappropriate" professional conduct is infrequent, Verizon should have no problem with its proposal. *Cavalier Post-Hearing Brief* at 55. But the opposite is true. Cavalier's language would unnecessarily impose substantial administrative burden and expense on Verizon whenever Cavalier (or any other CLEC that adopts the agreement) alleges a potential incident. For example, witness Smith explained that Cavalier's language would require Verizon to set up a new investigative arm to document even the slightest complaints. *Hearing Tr* at 215:4-7 (Smith); *Smith Direct* at 15:11-13, 17:16-21. More importantly, this language would send an inappropriate message to the industry that a revenue stream may be available to carriers who simply allege inappropriate conduct. *Hearing Tr.* at 215:7-11 (Smith). Cavalier's language is ripe for abuse in an industry where carriers continually seek new ways to game the system. *Hearing Tr.* at 215:7-14 (Smith). Rather than opening new opportunities for abuse solely for the purpose of imposing penalties on infrequent conduct, Cavalier should cooperate with Verizon in addressing its concerns. Witness Smith stated that Cavalier has adequate methods available to seek redress should these efforts fail. *See Hearing Tr* at 214:2-13 (Smith) (conduct is infrequent); 216:18 – 217:6 (Smith) (other options available for redress); *see also* Verizon's Proposed Section 25.5.7 (excepting claims for defamation from the agreement's limited liability provision).

Finally, Cavalier's proposal is inconsistent with the law. The Act contemplates an agreement between Cavalier and Verizon but it does not entitle Cavalier to a liquidated damages provision for any claim, including a common law tort claim. Cavalier is not entitled to rights beyond what it has at common law, and Verizon is entitled to no less. In fact, what Cavalier seeks is a new *per se* tort for "inappropriate professional conduct," which would abrogate the rights and defenses Verizon would otherwise be entitled to in a defamation or tortuous interference case If Cavalier believes that it has an actionable claim at common law against Verizon for defamation or tortuous interference, it should be required to prove all the elements of that claim, including its damages resulting from Verizon's conduct. Indeed, defamation claims asserted by Cavalier are expressly exempted from the limitation of liability provisions in the agreement. *See* Verizon's Proposed Section 25.5.7. Nothing in the Act entitles Cavalier to circumvent common law simply by alleging "inappropriate professional conduct."

Verizon's proposal is commercially reasonable, consistent with the Act, and it should be adopted.

XII. VERIZON'S PROPOSED LANGUAGE ON DIRECTORY LISTINGS IS FAIR TO BOTH PARTIES AND OFFERS A REMEDY FOR ERRORS AND OMISSIONS THAT IS COMPARABLE TO WHAT VERIZON PROVIDES TO ITS RETAIL CUSTOMERS (ISSUE C18)

In its post-hearing brief, Cavalier continues to ignore the legal standards that govern the parties' respective wholesale obligations for directory listing services and instead contends that Verizon should be the guarantor of the accuracy of all directory listings and should be strictly liable (and financially responsible) for any error, no matter how minor. But, Verizon is required by law only to provide Cavalier and other CLECs nondiscriminatory access to its directory listing services, and both the Commission and the Virginia Hearing Examiner in the Virginia section 271 proceeding found that Verizon provides such nondiscriminatory access. The Bureau should adopt Verizon's proposals and reject Cavalier's.

A. Cavalier Has Failed To Justify Why Verizon Should Be Required To Certify The Accuracy Of Each Cavalier Listing.

Cavalier mischaracterizes the testimony of Verizon's witnesses and contends that it proves Verizon can and should certify each Cavalier listing against the Listing Verification Report, as Cavalier proposes in Section 19.1.5. But Verizon witness Toothman explained in detail at the hearing why Cavalier's proposal is burdensome and unnecessary. *Toothman-Spencer Rebuttal* at 4:20 – 6:5; *Hearing Tr.* at 485:6-487:1 (Toothman). Verizon cannot compare Listing Verification Reports to Local Service Requests because Verizon's database cannot always identify which Local Service Request created a particular listing. *Toothman-Spencer Rebuttal* at 5:1-7; *Hearing Tr.* at 486:1-15; 490:21-22 (Toothman). Cavalier however ignores this evidence and erroneously claims that Mr. Toothman testified that Verizon "has not invested in software that could check an LVR [Listing Verification Report] against a database listing, despite conceding that doing so would benefit all CLECs." *Cavalier Post-Hearing Brief* at 57-58. Mr. Toothman testified that this problem cannot be fixed with "software" that Verizon simply loads in its directory database. Verizon's directory database is not configured to allow it to compare a customer listing to a Listing Verification Report. To do this comparison, Verizon would need to undertake the complicated and expensive task of creating special logic for its database, not simply purchase software.

Cavalier also claims Verizon conceded at the hearing that the parties could compare the Local Service Requests and Listing Verification Reports to determine which carrier is at fault for a particular error. *Cavalier Post-Hearing Brief* at 58-59. This is false. In the transcript section Cavalier cites, Mr. Toothman testified that if Cavalier saved its Local Service Requests and compared them to the Listing Verification Reports, the parties could determine whether Verizon or Cavalier caused the error. *Hearing Tr.* at 491:6-10 (Toothman). But this is not what Cavalier's proposed language would require. Instead, Cavalier's proposal would require *Verizon*, not Cavalier, to do this comparison by creating special logic for its database: "[w]ith respect to each listing verification report (LVR), Verizon shall affirmatively certify in writing that it has checked the validity of its directory information against the information submitted by Cavalier." Cavalier's Proposed Section 19.1.5. Cavalier's proposed language absolves it of any responsibility for directory listings accuracy and requires Verizon to be 100% responsible for these certifications.[3]

Cavalier has also failed to prove that its proposed certification process in Section 19.1.5. is necessary. Verizon witness Toothman explained in detail at the hearing the multiple quality checks Verizon already uses to verify the accuracy of directory listings. *Hearing Tr.* at 493:18 – 496:19 (Toothman):

- Verizon tries to ensure that as many Local Service Requests as possible "flow through" its systems in order to minimize the possibility of manual error;
- Verizon has developed a process that allows CLECs to move listings from one carrier to another without restating them, again in order to minimize errors;
- In addition to the Listing Verification Report, Verizon offers three other checkpoints where CLECs may verify customers' listings: Verizon sends a confirmation notice to CLECs after it submits a Local Service Request and a billing completion notice after the listing has been entered into Verizon's database, both of which recap listing information for simple listings;
- At any time in the process, CLECs may also make a directory listing inquiry, which allows CLECs to verify information for both simple and complex listings;
- Verizon performs "specific quality checks" where it checks directory listing service orders as they proceed downstream through Verizon's provisioning system It also provides refresher training to employees if systemic problems are

[3] Cavalier's claim that Verizon witness Toothman "admit[ted]" that when Cavalier corrects an error on the Listing Verification Report that "Verizon has benefited at the uncompensated expense of Cavalier" is also way off base. Cavalier Post-Hearing Brief at 59. Verizon does not (and should not) compensate Cavalier when Cavalier brings a discrepancy to Verizon's attention and Verizon corrects it prior to publication. In addition, Cavalier benefits because its customer's listing is accurate

detected during these quality checks;

- Verizon conducts supervisory audits of service records handled by employees, including directory listing service orders; and
- Verizon has a Directory Customer Care Team dedicated to work with CLECs on directory listing issues (including Listing Verification Report issues) and a Wholesale Customer Care Center that handles trouble reports from CLECs.

Verizon does not lack an "accuracy checking mechanism" for directory listings, as Cavalier claims. Verizon simply does not use the burdensome and technologically infeasible "certification" method Cavalier proposes in Section 19.1.5.

Finally, Cavalier has never explained why it cannot use the electronic Listing Verification Report, which may be imported into a spreadsheet in Excel or a similar program, to check its listings electronically. Cavalier claims this process is "burdensome" and in the past it dedicated a staff of "six" to review the Listing Verification Report. *Cavalier Post-Hearing Brief* at 58. But it does not take a staff of six to search an electronic spreadsheet, and Cavalier can certainly do so relatively simply, consistent with its agreement in Section 19.1.5 to use "commercially reasonable efforts to ensure the accurate listing of Cavalier Customer listings." Cavalier's position also flies in the face of the Commission's statements in the Virginia section 271 proceeding that CLECs' use of the Listing Verification Report "affords a competitor the opportunity to review its listings before publication, and further improves the accuracy of directory listings." *Virginia § 271 Order* ¶ 168.

In short, Cavalier has failed to show that the burdensome and expensive process it proposes in Section 19.1.5 is necessary, and its proposed language should be rejected.

B. Cavalier's New Proposed Credit Language Suffers From The Same Flaws As Its Previous Proposal And Should Be Rejected.

Verizon's Proposed Section 19.1.6 would fairly and reasonably compensate Cavalier by making Verizon's liability to Cavalier "comparable to" Verizon's liability to its own customers. Cavalier's credits would be based on the same formula Verizon uses to calculate credits for its customers – one-half of the fixed monthly charges that the customer pays for local exchange services. Verizon Virginia Tariff No. 201, Section 1.E.3 (attached as Exhibit 5 to Verizon Post-Hearing Brief). But because these credits are offered in the wholesale context rather than a retail context, this formula translates into a credit of 50% on the UNE loop rate where Cavalier serves a customer with a loop or entirely over its own facilities, and a credit of 50% on the resale charges for dial tone line and fixed usage services where Cavalier serves a customer with Verizon's resold services.

By contrast, Cavalier's new proposed Section 19.1.6 would base Cavalier's credits on what a "respective" Cavalier customer pays in "fixed monthly charges for local exchange services." This proposal is fundamentally flawed in a number of ways. First, these credits are based on rates and customer packages that Verizon has no control over and knows little to nothing about. For example, it is unclear how many of Cavalier customers subscribe to measured service versus flat rated usage service, a distinction that will greatly affect the amount of any credit Cavalier will receive under its proposal. Cavalier also does not define exactly what "fixed monthly charges for local exchange services" includes.

Moreover, although Cavalier claims that it wants a compensation mechanism that treats Cavalier the same as Verizon treats its retail customers, in reality its proposal ignores what a Verizon end user would receive and (like its previous proposal) calculates its credits based on customers in a Rate Group (Rate Group 7) that pay some of the highest "fixed monthly charges" in the state. And, unlike Verizon's proposal, which limits credits to "service-affecting errors," Cavalier's proposed language also allows it to collect for any error at all, regardless of whether the error impaired the customers' ability to receive calls. This contrasts with how Verizon compensates its retail customers, who, in many cases, do not receive *any* compensation for such an error. *Hearing Tr.* at 515:7 – 516:13 (Spencer); *Toothman-Spencer Direct Testimony* at 7:6-14; *Toothman-Spencer Rebuttal Testimony* at 9:6-10.

Finally, Cavalier's criticism that Verizon "changed" its proposal after the mediation before the Bureau in August is unfounded. As Verizon witness Spencer explained at the hearing, Verizon's proposed language on this issue has been consistent throughout the arbitration and is the same language it proposed in its Response to Cavalier's petition. *Hearing Tr.* at 504:8-17 (Spencer); *see also Response of Verizon to Cavalier's Petition for Arbitration*, dated September 5, 2003 at 43-46. Cavalier, on the other hand, provided Verizon with its new proposed credit language on the last day the Bureau permitted the parties to submit final offers. Regardless, Verizon's current credit proposal is actually more favorable to Cavalier than its initial offer at the mediation. Verizon's current offer is based on 50% of the UNE loop rates, which range from $10.74 in Density Zone 1 to $29.40 in Density Cell 3. Verizon's previous offer was based on 50% of the retail dial tone line rate, which is $5.00 for residential customers and ranges from $11-13.00 for business customers.

C. Cavalier's Remaining Proposals Concerning Directory Listing Should Be Rejected

For the remaining directory listing related issues, Cavalier again argues only briefly in support of its proposals and, as with its written testimony, fails to demonstrate why its proposed language should be approved. Specifically, Cavalier has not explained why its proposed Section 19 1 3 (requiring Verizon to provide ALI code information and unspecified "other information"), Section 19.1.6(c), (requiring Verizon if there is a Yellow Pages error to notify Cavalier of any contact that Verizon may have with the customer and to take "appropriate remedial action to correct any such error and compensate Cavalier as may be appropriate under the circumstances"), and Section 19.1.8 (requiring parties to negotiate direct, unmediated access for Cavalier to Verizon's directory services databases) should be included in the parties' interconnection agreement.

For all the reasons Verizon raised in its testimony and post-hearing brief, the Bureau should not adopt Cavalier's proposals. First, Cavalier does not dispute that Verizon already provides ALI codes to Cavalier (along with other CLECs), including weekly ALI code reports for all types of listings. *Toothman-Spencer Direct Testimony* at 11:7-14. Cavalier's proposed section 19.1.3 would also require Verizon to provide undefined "other information required to process an order for a directory listing" and be solely responsible for errors in Cavalier's listings if Verizon does not supply all of the information Cavalier wants. Cavalier is mistaken, as a result, when it states in its post-hearing brief that its proposed sections on "pre-production" errors do not carry financial penalties. *Cavalier Post-Hearing Brief* at 58.

In addition, Cavalier has never explained how it could lawfully restrict the conduct and activities of Verizon Information Services nor how it could interfere with Verizon Information Services' right to contact its own advertising customers. As Verizon already explained, this language, if adopted, would violate Verizon Information Services' First Amendment right to engage in lawful commercial speech. In addition, Cavalier's proposed language requiring the parties to negotiate towards an arrangement where Cavalier has direct, unmediated access to Verizon's directory services database is unnecessary. And, since the Commission has already found that Verizon is not required to provide unmediated access to Verizon's databases (*Triennial Review Order* ¶ 567), Cavalier's proposal should be rejected.

Verizon's proposed language on directory listings is more reasonable than Cavalier's, is consistent with the manner in which Verizon provides directory listings to its retail customers, and would better accomplish the important public policy goal of involving both parties in ensuring that customers' directory listings are as accurate as possible. The Bureau should reject Cavalier's proposed language and adopt Verizon's.

XIII. CAVALIER MISREPRESENTS THE SCOPE OF VERIZON'S PROPOSED ASSURANCE OF PAYMENT PROVISIONS (ISSUE C21)

Cavalier mischaracterizes Verizon's proposed contract language as an attempt to cripple or bully Cavalier at Verizon's whim. However, Verizon's assurance of payment provisions are necessary, reasonable, and not overly burdensome to Cavalier. Indeed, what Verizon proposes is very similar to the language resulting from the *Virginia Arbitration Order.* By contrast, Cavalier proposes that Verizon is not entitled to *any* assurance of payment provision at all. The Bureau has previously rejected that argument and it should do so again here. *Virginia Arbitration Order* ¶ 727 ("Verizon has a legitimate business interest in receiving assurances of payment … from its [CLEC] customers.").

Cavalier first mischaracterizes Verizon's proposed language by stating that "if Cavalier disputed more than 5% of Verizon's charges on any two bills in 60 days, or any three bills in 180 days, then Verizon could demand an additional $2.5 million." *Cavalier Post-Hearing Brief* at 62. This is inaccurate: Section 20.6 *explicitly excludes* amounts subject to bona fide dispute. Moreover, as described below with regard to Issue C24, Verizon treats *every* dispute as a bona fide dispute; even then, Cavalier has an opportunity to escalate that decision pursuant to Section 28.9 of the Agreement. *See Hearing Tr.* at 313:21 – 314:1 (Smith) ("We accept all disputes from the customer when they come in as a bona fide dispute."). *See also generally id.* at 313:21-315:6 (Smith).